

6
AE 6

MARK J. BENNETT 2672
Attorney General of Hawai'i

2010 MAR 19 PM 12:53

J. GERARD LAM 5326
Deputy Attorney General
Department of Attorney
General, State of Hawai'i
Labor Division
425 Queen Street
Honolulu, Hawai'i 96813
Telephone: 586-1450

HAWAII LABOR
RELATIONS BOARD

Attorneys for Director, Department
of Labor and Industrial Relations

HAWAII LABOR RELATIONS BOARD

STATE OF HAWAII

In the Matter of DIRECTOR,)	CASE NO. OSH 2009-37
)	
DEPARTMENT OF LABOR AND)	STIPULATION AND SETTLEMENT
INDUSTRIAL RELATIONS,)	AGREEMENT; EXHIBITS A-B; APPROVAL
)	AND ORDER
Complainant,)	
)	
vs.)	
)	
MARYL PACIFIC CONSTRUCTION,)	
INC.,)	
)	
Respondent.)	

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director, Department of Labor and Industrial Relations ("Director")
and Respondent Maryl Pacific Construction, Inc. ("Respondent") having reached a full and
complete settlement of the above-captioned contested case presently pending before the Hawai'i
Labor Relations Board ("Board") stipulate and agree as follows:

On or about March 10, 2009, the Director, by and through the State of Hawai'i's
Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located
at 1748 Liliha Street, Honolulu, Hawaii 96813.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on July 6, 2009 ("Citation") to Respondent alleging violations of the Hawai'i Occupational Safety and Health Standards and assessed an aggregate penalty of \$875.00. *See* Exhibit A.

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawai'i Revised Statutes ("HRS").
2. At all relevant times, Respondent maintained a workplace at 1748 Liliha Street, Honolulu, Hawaii 96813.
3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirement of HRS chapter 396, the Hawai'i Occupational Safety and Health Law.
4. Respondent agrees that it has or will abate each violation listed in the Citation in compliance with the abatement requirements under Hawai'i Administrative Rule § 12-51-22. Respondent shall submit the completed abatement certification to HIOSH no later than ten (10) days after this Agreement is filed; failure to timely do so may result in additional penalties or follow up inspections.
5. Respondent further agrees to implement additional enforcement measures to ensure compliance with all established health and safety protocols, standards, and in particular, recognition of all applicable fall protection standards. In this regard, in addition to

from its current safety inspection protocols, Respondent will also conduct daily and random “safety contacts” on its current and future work sites for a period of three (3) years after this Agreement is approved and filed by the Board.

6. In conducting these “safety contacts”, Respondent will deal directly with employees, including those of its subcontractors, instead of communicating with the employees through their foremen or managers. The safety contacts will be used to provide both positive and negative reinforcement as the safety contacts may result in written recognition that an employee has complied with safety requirements or written warnings that an employee has not complied with such. Respondent shall document and keep a record of all safety contacts it conducts including, but not limited to, the following: the date, time, person conducting the safety contact, employees contacted, and results of the safety contacts. See, e.g., Exhibit B (Daily Job Safety Inspection).

7. In return, the Director agrees that the violations, corresponding characterizations, and penalties as stated in the Citation are deleted. *See* Exhibit A.

8. Based on the stipulated amendments described above, the Citation is deleted and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

9. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

10. Respondent shall continue to comply with HRS chapter 396, the Hawai‘i Occupational Safety and Health Law, and the related rules.

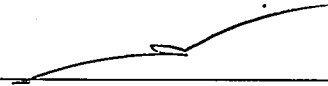
11. Nothing in this Agreement shall bar the Director from taking any action

regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawai'i Occupational Safety and Health Law, or the related rules.

DATED: Honolulu, Hawaii, March 19, 2010.

APPROVED AS TO FORM:

MARYL PACIFIC CONSTRUCTION, INC.

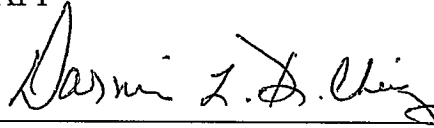

BRIAN G.S. CHOY
Attorney for Respondent

By: Mary Drai
Its: SAFETY MANAGER

APPROVED AS TO FORM:

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS, STATE OF
HAWAII


J. GERARD LAM
Deputy Attorney General


DARWIN L.D. CHING

Attorney for Director
Department of Labor and
Industrial Relations, State of Hawai'i

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 380

DATED: March 19, 2010


JAMES B. NICHOLSON, Chair


SARAH R. HIRAKAMI, Member

In re: Director, Dept. Of Labor And Indus. Relations v. Maryl Pacific Construction, Inc., Case No. OSH 2009-37, Stipulation And Settlement Agreement; Exhibits A-B; Approval And Order.

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813
Phone: (808)586-9110 FAX: (808)586-9104



Certified Number: 7006 2150 0004 4122 2079

Citation and Notification of Penalty

To:

Maryl Pacific Construction Inc
and its successors
55 Merchant St #2900
Honolulu, HI 96813

Inspection Number: 311437651 (Soon Hye
Edgerton)

Inspection Date(s): 03/10/2009- 03/10/2009

Issuance Date: 07/06/2009

OSHA ID: E4528

Optional Report No.: 03409

Inspection Type: Referral

Scope of Inspection: Partial Inspection

Inspection Site:

1748 Liliha St
Honolulu, HI 96813

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violations which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful and Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-51-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

ABATEMENT CERTIFICATION

DARWIN L.D. CHING, DIRECTOR
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

Maryl Pacific Construction Inc
55 Merchant St #2900
Honolulu, HI 96813

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____
How corrected: _____

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____
How corrected: _____

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____
How corrected: _____

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____
How corrected: _____

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____
How corrected: _____

I attest that the information contained in this document is accurate and that the affected employees and their
representatives have been informed of the abatement activities described in this certification.

Signature

Typed or Printed Name



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 07/06/2009. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, HONOLULU, HI, 96813 on _____ at _____.

Employees and/or representatives of employees have a right to attend an informal conference.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 311437651

Inspection Dates: 03/10/2009 - 03/10/2009

Issuance Date: 07/06/2009



Citation and Notification of Penalty

Company Name: Maryl Pacific Construction Inc
Inspection Site: 1748 Liliha St, Honolulu, HI 96813

Citation 1 Item 1 Type of Violation: **Serious**

29 CFR 1926.501(b)(11) [Refer to chapter 12-121.2, HAR] was violated because:

An employee was working without fall protection on a commercial roof structure which was about 18 feet above ground level. Without fall protection, the employee was potentially exposed to serious fall injuries.

29 CFR 1926.501(b)(11) states "Steep roofs. Each employee on a steep roof with unprotected sides and edges 6 feet (1.8 m) or more above lower levels shall be protected from falling by guardrail systems with toeboards, safety net systems, or personal fall arrest systems."

Location: Project site at 1748 Liliha St

Date By Which Violation Must be Abated:
Penalty:

Corrected
\$ 875.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 311437651

Inspection Dates: 03/10/2009-03/10/2009

Issuance Date: 07/06/2009



Citation and Notification of Penalty

Company Name: Maryl Pacific Construction Inc
Inspection Site: 1748 Liliha St, Honolulu, HI 96813

Citation 2 Item 1 Type of Violation: Other

29 CFR 1926.1051(a) [Refer to chapter 12-154.1, HAR] was violated because:

An employee was using guardrails in lieu of a ladder to descend from a roof structure. The distance between the roof eave and the lower landing surface was over 4 feet.

29 CFR 1926.1051(a) states "A stairway or ladder shall be provided at all personnel points of access where there is a break in elevation of 19 inches (48 cm) or more, and no ramp, runway, sloped embankment, or personnel hoist is provided."

Location: Project site at 1748 Liliha St

Date By Which Violation Must be Abated:

Penalty: \$ 0.00


DARWIN L.D. CHING
Director

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

DAILY JOB SAFETY INSPECTION

Project: _____

Week Ending: _____

Mark: (X) no correction needed
(O) not applicable
(C) correction needed

		Mon	Tues	Wed	Thur	Fri	Comments
1	First Aid supplies adequate?						
2	Hard-hats being worn?						
3	Safety Glasses being worn?						
4	Other personal protective equipment being worn & maintained? (hearing, respiratory, face & fall protection)						
5	Fire extinguishers conspicuously located and accessible?						
6	Barricades adequate?						
7	Dust controls adequate?						
8	Excavations, trenches, etc. sloped & benched, shored & barricaded properly?						
9	Housekeeping adequate?						
10	Roadways, walks cleaned frequently?						
11	Floor openings covered & secured?						
12	Rebar caps in place?						
13	Lighting adequate?						
14	Ventilation adequate?						
15	Scaffolding properly constructed?						
16	Temporary stairs, ladders, ramps constructed to code?						
17	Guardrails erected around floor openings, perimeter, & other critical areas?						
18	Protruding nails in lumber removed?						
19	Electrical equipment in good condition?						
20	Forms, lumber, plywood, & other material being safely handled?						
21	Cranes & hoists properly maintained & safeguarded?						
22	Are safety rules being carried out?						
23	Tools in good condition? Ground pin?						
24	Fall hazards identified?						

All of the above job items have been inspected. Those marked with (C) have been corrected with the following exceptions:

Inspected by _____

EXHIBIT B